



February 11, 2000

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR2000-0498

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132159.

The Harris County District Attorney's Office (the "district attorney") received a request for its file pertaining to a named individual. You state that basic arrest information and documents filed with the criminal district court have been released to the requestor. You state that other responsive information is excepted from disclosure under sections 552.108 and 552.101 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

You assert that the documents labeled Exhibit "A" are excepted from disclosure under section 552.108, the "law enforcement" exception. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(3). Unless the information in question supplies the explanation on its face, a governmental body should reasonably explain how section 552.108 is applicable to it. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that Exhibit "A" represents work product of the district attorney's office, including notes of prosecutors and their investigators, correspondence with an expert witness, a D.I.M.S. report, and the cover folder of the prosecution file. Assuming that these documents were prepared by or at the direction of attorneys representing the state, we agree that the district attorney may withhold them pursuant to section 552.108(a)(3).

You assert that the documents submitted as Exhibit "B" represent criminal history record information ("CHRI") that is excepted from public disclosure under section 552.101 of the Government Code. Section 552.101 protects information that is made confidential by law, either constitutional, statutory, or by judicial decision. Access to CHRI obtained from the National Crime Information Center ("NCIC") is governed and restricted by federal law. *See* 28 C.F.R. § 20.1, *et seq.*; Open Records Decision No. 565 at 10-12 (1990). The relevant federal regulations permit each state to follow its own applicable law with respect to the CHRI that it generates. ORD 565 at 11-12. Sections 411.083 and 411.089 of the Government Code authorize a criminal justice agency to obtain CHRI from the Texas Crime Information Center ("TCIC"). However, CHRI obtained from the TCIC network may be released by a criminal justice agency only to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, CHRI from the NCIC generated by the federal government or another state may be obtained only in accordance with the relevant federal regulations, and CHRI obtained from the Texas Department of Public Safety or another Texas criminal justice agency through the TCIC must be withheld in accordance with subchapter F of chapter 411 of the Government Code. We agree that section 552.101 of the Government Code, in conjunction with federal and state statutory law, requires the district attorney to withhold all CHRI obtained from the NCIC or TCIC. We note, however, that CHRI collected by the TCIC network does not include driving record information. *See* Gov't Code § 411.082(2)(B).

We also note that the district attorney appears to have obtained some of the records in Exhibit "B" from a local database. As such local information is essentially a compilation of an individual's criminal history, it resembles the other records contained in Exhibit "B." To the extent that a local governmental entity has compiled or summarized a particular individual's CHRI, the compilation or summary assumes a character that implicates the person's right of privacy, so as to be confidential under section 552.101. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, however, the requestor states that he is the attorney for the person who is the

subject of the local CHRI. "A . . . person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Thus, the requestor has a special right of access to any CHRI pertaining to his client that the district attorney compiled from local law enforcement records. Any CHRI of that nature must be released.

You assert that the documents labeled Exhibit "C" are excepted from disclosure under section 552.101 in conjunction with laws governing the confidentiality of grand jury proceedings. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. ORD 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* You state that the documents in Exhibit "C" are grand jury subpoenas and documents obtained by the grand jury in response to its subpoenas. To the extent that these materials are in the custody of the district attorney as agent for the grand jury, we conclude that they are in the constructive possession of the grand jury and are therefore not subject to disclosure under chapter 552 of the Government Code.

Finally, you state that the materials contained in Exhibit "D" relate to child welfare and protective services and investigation of sexual abuse and are confidential under section 552.101 of the Government Code in conjunction with provisions of the Family and Human Resources Codes. Section 264.408 of the Family Code provides in relevant part:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the [D]epartment [of Protective and Regulatory Services], department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

(b) Information related to the investigation of a report of abuse or neglect under Chapter 261 and services provided as a result of the investigation is confidential as provided by Section 261.201 [of the Family Code].

Fam. Code § 264.408(a), (b). Having reviewed the materials you submitted as Exhibit “D,” we conclude that they are confidential under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code and must not be released.

In summary, attorney work product of the district attorney’s office may be withheld from disclosure under section 552.108(a)(3). Criminal history record information obtained from the NCIC or TCIC is confidential under section 552.101 in conjunction with federal and state law and must not be released. However, the requestor has a special right of access to any CHRI pertaining to his client that the district attorney compiled from local law enforcement records, and that information must be released. Grand jury materials in the custody of the district attorney as agent for the grand jury are in the grand jury’s constructive possession and are not subject to disclosure under chapter 552 of the Government Code. Submitted information relating to child welfare and protective services and investigation of sexual abuse is confidential under section 552.101 in conjunction with section 264.408 of the Family Code and must not be released. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

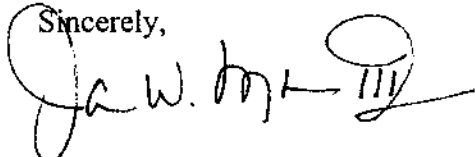
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ja W. Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132159

Encl. Submitted documents

cc: Mr. Troy Locklear
Attorney at Law
1018 Preston, Suite 200
Houston, Texas 77002
(w/o enclosures)